

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION**

LYNWOOD WRIGHT, et al

PLAINTIFFS

VERSUS

CIVIL ACTION NO. 2:08CV3-P-A

**LIFE INVESTORS INSURANCE COMPANY
OF AMERICA, et al**

DEFENDANTS

ORDER

This cause is before the Court on defendant Life Investors Insurance Company of America's Motion to Dismiss Pursuant to rules 9(b) and 12(b)(6) [15]. The Court, having reviewed the motion and being otherwise fully advised in the premises, finds as follows, to-wit:

Defendant seeks dismissal of Counts IV through X of the Complaint. The theories of recovery alleged therein are: tortious breach of contract, fraud, fraudulent concealment, civil conspiracy, aiding and abetting fraud, equitable estoppel and unjust enrichment.

Dismissal pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure is appropriate if a party fails to state a claim under which relief can be granted. The allegations of the Complaint must be accepted as true when the Court considers whether the plaintiffs have stated a cause of action. See Cramer v. Skinner, 931 F.2d 1020 (5th Cir. 1991); cert. denied, 112 S. Ct. 298, 116 L.Ed.2d 242, 60 U.S.L.W. 3057 (1991). If the factual allegations are not "enough to raise a right to relief above the speculative level," the Court may grant the motion to dismiss. Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1965 (2007). The Complaint "must contain something more than a statement of facts that merely creates a suspicion of a legally cognizable right of action." Id.

The Court, having evaluated the instant motion under this standard, concludes that

defendant's motion is not well-taken and should be denied as to Counts IV through IX.¹ However, Count X of the Complaint purports to state a claim for unjust enrichment. Inasmuch as a claim for unjust enrichment arises only in the absence of an agreement between the parties, a point belied by the contracts sued upon, the defendant's motion to dismiss for failure to state a claim is well-taken and should be granted. Johnston v. Palmer, 963 So.2d 586, 596 (Miss. Ct. App. 2007).

IT IS, THEREFORE, ORDERED AND ADJUDGED that the defendant Life Investors Insurance Company of America's Motion to Dismiss Pursuant to rules 9(b) and 12(b)(6) [15] should be, and hereby is, GRANTED IN PART AND DENIED IN PART. IT IS FURTHER ORDERED that Count X of the Complaint should be, and hereby is, DISMISSED WITH PREJUDICE.

SO ORDERED, this the 26th day of September 2008.

/s/ W. Allen Pepper, Jr.
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE

¹ The Court likewise concludes that the plaintiffs' Complaint does not violate F.R.C.P. 9(b)'s requirement that allegations of fraud be pleaded with particularity. Hart v. Bayer Corporation, 199 F.3d 239, 248 n. 6 (5th Cir. 2000). The Complaint alleges enough particulars to apprise the defendant of the "who, what, when, where and how" of the alleged fraud. Given that the degree of particularity required necessarily varies with the facts of each case, the Fifth Circuit has never detailed the requirements of Rule 9(b) with specificity. The factual averments of the plaintiffs' Complaint are sufficient under the circumstances; any remaining details are easily ascertained through the mechanism of discovery.